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pany at a time when he knew a passenger train was due, he was guilty of contributory negligence, precluding a recovery for his death caused by collision with the passenger train in question.

WISE TERMINAL CO. v. McCORMICK.

September 14, 1905.

[51 S. E. 731.]

MASTER AND SERVANT—INJURIES TO SERVANT—RAILROADS—NEGLIGENCE

1. Where plaintiff, a brakeman in defendant's employ, was injured while attempting to board defendant's sole locomotive at a time when plaintiff was off duty, and when there was no reason to suppose that any one was in the vicinity or would attempt to get upon the engine, defendant was not negligent in leaving an oil can used by the engine hostler on the footboard of the engine, or in not having a rule forbidding such obstruction.

ABSENCE OF LIGHTS—PROXIMATE CAUSE.

2. Where, in an action for injuries to a servant while attempting to board an engine, plaintiff testified that he both saw and heard the engine coming toward him prior to the accident, defendant was not negligent in failing to have marking lights on the rear of the tender.

EVIDENCE—SPEED—EXPERT TESTIMONY.

3. The speed of a train and within what distance it could be stopped are questions on which expert testimony cannot be introduced, unless based on the operation of cars or engines of similar construction and equipment under like circumstances.

MASTER AND SERVANT—INJURIES TO SERVANT—RAILROADS—CONTRIBUTORY NEGLIGENCE.

4. Where plaintiff, without necessity, after the termination of his service for the day, went to defendant's railroad yard to give the watchman a coach key, and for that purpose stood in the middle of the track when he knew the engine was approaching him backwards, and attempted to get on the footboard in the rear, when he slipped and was injured, he was guilty of contributory negligence, precluding a recovery.

DISCOVERED PERIL.

5. In an action for injuries to a brakeman while attempting to board the tender of an engine approaching him at night, evidence held insufficient to entitle plaintiff to recover on the theory that the man in charge of the engine was negligent in failing to stop the same after he discovered plaintiff's danger.

NEECE v. NEECE et al.

September 14, 1905.

[51 S. E. 739.]

EXECUTORS—RIGHT TO TESTATOR'S TITLE PAPERS.

1. Though the executor has the right to the custody of the title papers of his testator, the parties in interest have a right to examine them.

EVIDENCE—ADMISSIONS—CONDUCT.

2. A party's conduct, indicating a belief in the weakness of his case, may be shown against him as an admission, subject to explanations he may offer.

[Ed. Note.—For cases in point, see vol. 20, Cent. Dig. Evidence, sec. 762.]

SPECIFIC PERFORMANCE—CONTRACT TO CONVEY LAND—POSSESSION AND IMPROVEMENTS BY PURCHASER.

3. Where defendant's ancestor took possession of the land under contract binding plaintiff to convey the same, and improved the same, and continued in the possession thereof for many years with the acquiescence of plaintiff, it was inequitable to refuse specific performance of the contract.

PRUDENTIAL FIRE INSURANCE CO v. ALLEY.

September 14, 1905.

[51 S. E. 812]

INSURANCE—STIPULATIONS IN POLICY—WARRANTIES.

1. A stipulation in a policy insuring a stock of merchandise, requiring the assured to make periodical inventories, to keep books and to keep the inventories and books in a fireproof safe at night, or the policy shall be void, is a warranty, and a compliance therewith is a condition precedent to a recovery, for a loss; Va. Code 1904, p. 1766, Sec. 3344a, providing that no answer to interrogatories made by an applicant for a policy shall bar a recovery thereon by reason of any warranty in the application, unless the answer was willfully false, not applying to the stipulation.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Sec. 853.]

SAME—STOCK OF GOODS—KEEPING OF BOOKS—COMPLIANCE.

2. A stipulation in a policy insuring a stock of merchandise, requiring the assured to keep books showing a record of the business transacted, including purchases, sales, and shipments for cash and credit, is complied with by the assured keeping books so that, with the assistance of those who kept them, the amount of the purchases and sales could be ascertained and cash transactions distinguished from credit transactions.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, Sec. 853.]

SAME—INVENTORIES OF GOODS INSURED—COMPLIANCE.

3. A policy insuring a stock of merchandise required the assured to take periodical inventories, and, unless an inventory had been taken within a year prior to the date of the policy, one should be taken within 30 days of the issuance of the policy. The assured took an inventory of his stock June 10th. Subsequently he shipped the goods to another town and commenced business there, and the policy was issued June 25th, insuring the goods and the building in which they were placed. The inventory